

3. On March 23, 2016 petitioner reported that she would be on unpaid maternity leave effective 3/29/16.
4. The agency ended her CCB authorizations effective April 30, 2016.
5. Petitioner used CCB in April 2016 but was not in an approved activity.
6. On October 4 and 5, 2016 the agency issued a notice of CCB overpayment to the petitioner in the amount of \$866.88. The reason for the overpayment was using CCB when not in an approved activity due to non-client error.

DISCUSSION

Child Care Benefits (CCB) are provided to working low-income families; working foster parents, kinship care relatives providing care under a court order and receiving kinship care benefits, and subsidized guardians/interim caretakers; and for individuals who are preparing for employment through Wisconsin Works, Food Share Employment and Training Program (FSET), tribal Temporary Assistance for Needy Families (TANF), or in high school and working on their high school diploma.

In this case, the agency admits it failed to end petitioner's CCB authorization when she reported that she was going on maternity leave. Petitioner testified that she did send her daughter to child care during the time because she did not know that her authorization would end and that the process was confusing. There are also concerns about the fairness of the overpayment assessed against her when the agency was at fault for issuing the CCB. The statute requires the department to recover all child care overpayments regardless of who is at fault. Wis. Stat. §49.195(3). The Wisconsin Administrative Code, §DCF 101.23(1)(g), explains this in the following way:

"Overpayment" or "debt" means any benefit or payment received under s. 49.148, 49.155, 49.157, or 49.19, Stats., in an amount greater than the amount that the individual, AFDC assistance group, or W-2 group was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment. An overpayment may be the result of client error, administrative error, or intentional program violation.

This means that the petitioner is responsible for the overpayment, even if the CCB authorization was issued in error by the agency. Accordingly, I must uphold its decision.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

The petitioner may wish to contact the Public Assistance Collection Unit (PACU), which is responsible for collecting overpayments of public assistance benefits, to see if she can set up a reasonable repayment plan and avoid a tax intercept. The PACU can be reached at P.O. Box 8938, Madison, WI 53708-8938 by mail, Phone 1-800-943-9499, Fax: (608) 266-8302, email: dwspace@dwd.state.wi.us, and online at <https://dcf.wisconsin.gov/pacu/contactus>.

CONCLUSIONS OF LAW

The agency correctly seeks to recover an overpayment of CCB (Claim # [REDACTED]) that occurred because it erred in authorizing the benefits.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

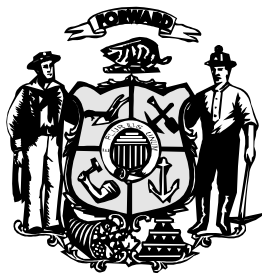
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of January, 2017

\s _____
Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 24, 2017.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud